

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

**MARIETTA C. RUSSELL, ADMINISTRATRIX
OF THE ESTATE OF JOHN WILLIAM CHILDS,
DECEASED, AND PERSONAL REPRESENTATIVE
OF THE WRONGFUL DEATH BENEFICIARIES
OF JOHN WILLIAM CHILDS, DECEASED,**

PLAINTIFF,

VS.

CIVIL ACTION NO. 4:06CV168-P-B

NATIONAL HERITAGE REALTY, INC., ET AL.,

DEFENDANTS.

ORDER

This matter comes before the court upon Plaintiff's Motion to Remand [14-1]. After due consideration of the motion and the response filed thereto, the court finds as follows, to-wit:

The plaintiff, a Mississippi resident, filed the instant action on August 30, 2006 in the Circuit Court of Sunflower County, Mississippi against a variety of nursing home defendants, all of whom except National Heritage Realty, Inc. and Indianola Health & Rehabilitation Center, are alleged by the plaintiff to be residents of other states. On October 5, 2006 the defendants removed this case, arguing the existence of diversity jurisdiction given that there is complete diversity and the amount in controversy exceeds \$75,000.00. On that same day, the defendants filed a motion to dismiss the plaintiff's claims against Indianola Health & Rehabilitation Center because it is merely a trade name of National Heritage Realty, Inc. The court granted the motion on January 4, 2007, thereby dismissing with prejudice the plaintiff's claims against Indianola Health & Rehabilitation Center.

On November 7, 2006 the plaintiff filed a motion to remand, arguing the lack of complete diversity since National Heritage Realty, Inc.'s principal place of business is in Mississippi.

In response, the defendants maintain that National Heritage Realty, Inc. is a Louisiana

corporation whose principal place of business is in Atlanta, Georgia. In support of this, the defendants attached the Affidavit of Kristy L. Prince Owen, litigation manager for Defendant Mariner Health Care Management Company.

The plaintiff filed no reply, nor has she otherwise disputed the contents of Owen's affidavit. In any event, the plaintiff's brief in support of her motion to remand does not set forth any basis for her argument that National Heritage's principal place of business is in Mississippi other than her citation to the Fifth Circuit's "total activity" test and her statement that "[o]n information and belief, Defendant National Heritage Realty Inc., d/b/a Indianola Health & Rehabilitation Center performs all of its business activities in the State of Mississippi, with its own management, employees and assets." This is insufficient to establish diversity jurisdiction.

IT IS THEREFORE ORDERED AND ADJUDGED that Plaintiff's Motion to Remand [14-1] is **DENIED**. The parties are to contact the U.S. Magistrate Judge within 10 business days of this Order to schedule a case management conference.

SO ORDERED this the 8th day of January, A.D., 2007.

/s/ W. Allen Pepper, Jr.

W. ALLEN PEPPER, JR.

UNITED STATES DISTRICT JUDGE